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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jesus Hector Lagarda-Gil,
Defendant/Movant,
vs.
United States of America,
Respondent.

CV-24-00345-TUC-SHR
CR-22-01607-TUC-SHR (JR)

GOVERNMENT'S RESPONSE TO
MOVANT'S MOTION TO VACATE, SET
ASIDE OR CORRECT SENTENCE (2255)

Respondent, United States of America, by and through its undersigned attorneys, files this response asking the Court to deny Defendant/Movant's Motion to Vacate, Set Aside or Correct Sentence. (CV- ECF Doc. 1.) The defendant received effective assistance of counsel, and pleaded guilty knowingly, intelligently, and voluntarily. The defendant cannot show that his counsel's representation fell below an objective standard of reasonableness, and he cannot show that he was prejudiced by counsel's performance. The defendant's motion should be denied without an evidentiary hearing.

I. Procedural Facts

a. Conspiracy to Distribute Methamphetamine Case

The defendant and movant, Jesus Hector Lagarda-Gil, was arrested on June 29,

1 2022. (CR-ECF Doc. 1.)¹ On July 21, 2022, the grand jury indicted the defendant on one
2 count of conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841 and
3 846, and four counts of possession with intent to distribute methamphetamine, in violation
4 of 21 U.S.C. § 841. (CR-ECF Doc. 25.)

5 The defendant retained Jose Mendoza to represent him, and Mr. Mendoza became
6 counsel of record on August 8, 2022. (CR-ECF Doc. 27.) On September 21, 2023, the
7 defendant had a change of plea hearing before U.S. Magistrate Judge Jacqueline Rateau
8 and entered into a plea agreement. (CR-ECF Doc. 67.) The plea agreement included
9 stipulations to the guideline calculations, including a two-level enhancement for
10 aggravating role under U.S.S.G. §3B1.1(c). (CR-ECF Doc. 68.) The plea agreement also
11 included a stipulated sentencing range of 168 to 180 months of imprisonment and permitted
12 the defendant to argue for a downward variance to the mandatory minimum term of 120
13 months. (CR-ECF Doc. 68.) The defendant personally signed the plea agreement. (CR-
14 ECF Doc. 68.)

15 During the change of plea hearing, Judge Rateau told the defendant that the agreed-
16 upon sentencing range in the plea was 168 months to 180 months, and that the defendant
17 may argue for a variance down to the mandatory minimum term of 120 months. (COP TR
18 6:7-23.)² The judge also reiterated that a term in the plea was that the parties agree that the
19 defendant was an aggravating participant for purposes of role analysis. (COP TR 7:1-3.)
20 Judge Rateau then asked the defendant if the sentencing portion of his plea agreement as
21 he understood it had been accurately summarized, and the defendant replied, under oath,
22 “Yes, your Honor.” (COP TR 7:19-24.) The judge also asked if the defendant signed the
23 plea after reviewing it with his attorney, and the defendant stated he had. (COP TR 7:24-
24 25; 8:1.) Judge Rateau next advised the defendant of the trial rights he was giving up by

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26 ¹ CR-ECF refers to the docket for the defendant’s criminal case: CR22-01607-TUC-
27 SHR (JR).

28 ² COP TR refers to the change of plea transcript.

1 pleading guilty and asked the defendant if he wished to waive those rights. (COP TR 8-9.)
 2 The defendant stated he did. (COP TR 9:5.)

3 Judge Rateau explained the maximum penalties that could result from the
 4 defendant's guilty plea. The judge told the defendant that the penalties he faced were a fine
 5 of up to \$10,000,000, a term of imprisonment of up to life with a minimum mandatory term
 6 of ten years, and anywhere from five years to a lifetime of supervised release. (COP TR 9:
 7 6-11.) The defendant stated he understood. (COP TR 9:12.) Judge Rateau recited the
 8 factual basis as it was written in the plea, and asked the defendant how he was pleading.
 9 (COP TR 14:18-20.) The defendant replied, "Guilty." (COP TR 14:21.)

10 At the sentencing hearing on January 22, 2024, the Court asked the defendant if he
 11 was satisfied with the services that Mr. Mendoza provided him in this matter, and the
 12 defendant stated he was. (SE TR 3:13-15.)³ The Court also went over the plea's sentencing
 13 range of 168 to 180 months, and the maximum possible penalty under the plea of 180
 14 months. (SE TR 4:6-14.) Mr. Mendoza asked the Court to impose the lowest sentence
 15 possible under the plea agreement, the mandatory minimum term of 120 months. (SE TR
 16 19:10-12, 19-21.) The government requested a sentence of 168 months. (SE TR 11:10-12.)
 17 The Court imposed a sentence of 132 months followed by five years of supervised release.
 18 (SE TR 14:5-9.)

19 On January 29, 2024, Mr. Mendoza moved to withdraw as counsel for the defendant,
 20 and on January 31, 2024, the motion was granted.

21 **b. 2255 Motion**

22 On July 11, 2024, the defendant/movant filed a Motion Under 28 U.S.C. § 2255 to
 23 Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. (CV-ECF Doc.
 24 1.)⁴ On October 9, 2024, the Court ordered the government to file a response within 60

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 27 ³ SE TR refers to the sentencing transcript.

28 ⁴ CV-ECF refers to the docket in CV-24-00345-TUC-SHR.

1 days. (CV-ECF Doc. 3.) In its order, the Court summarized the three grounds for relief that
2 the defendant asserted in his motion: (1) ineffective assistance of counsel for failing to
3 adequately investigate the case and explain the impact of, and alternative to, a guilty plea;
4 (2) the defendant's guilty plea not being entered into knowingly, intelligently, and
5 voluntarily; and (3) ineffective assistance of counsel for failing to investigate the
6 defendant's criminal history and correct misinformation that caused his sentence to be
7 enhanced.

8 Mr. Mendoza emailed undersigned counsel a Declaration addressing the
9 defendant's ineffective-assistance-of-counsel claims, which is attached as Government's
10 Exhibit 1: Declaration of Jose Mendoza.

11 The government requested an extension of time to respond. (CV-ECF Doc. 4.) The
12 Court granted the motion and the government's response is now due January 23, 2025.
13 (CV-ECF Doc. 5.)

14 The defendant's current, projected release date is September 25, 2031.

15 **II. Law and Arguments**

16 Under 28 U.S.C. § 2255, a petitioner may file a motion requesting the sentencing
17 court vacate, set aside, or correct the sentence on the following grounds: (1) the sentence
18 was imposed in violation of the Constitution or laws of the United States; (2) the court was
19 without jurisdiction to impose the sentence; (3) the sentence was in excess of the maximum
20 authorized by law; or (4) the sentence is otherwise subject to collateral attack.

21 A court must make a threshold determination of whether an evidentiary hearing is
22 required to adjudicate a defendant's claims. *See* 28 U.S.C. § 2255(b). A petitioner is
23 entitled to an evidentiary hearing on his § 2255 motion "unless the motion and files and
24 records of the case conclusively show that the prisoner is entitled to no relief." *Id.*; *see also*
25 *United States v. Leonti*, 326 F.3d 1111, 1116 (9th Cir. 2003) (stating that summary
26 dismissal is warranted if petitioner's allegations are "palpably incredible or patently
27 frivolous"). However, "[i]f it plainly appears from the motion, any attached exhibits, and
28 the record of prior proceedings that the moving part is not entitled to relief, the judge must

1 dismiss the motion and direct the clerk to notify the moving party.” Rule 4(b) of the Rules
 2 Governing Section 2255 Proceeding.

3 **a. Ineffective-Assistance-of-Counsel Standards and the Effect of a Guilty**
 4 **Plea**

5 To obtain relief for a claim of ineffective assistance of counsel, a defendant must
 6 show both: (1) that counsel’s representation fell below an objective standard of
 7 reasonableness, and (2) that counsel’s deficient performance prejudiced the defendant.
 8 *Strickland v. Washington*, 466 U.S. 668, 687–88, 692 (1984); *see also Lockhart v. Fretwell*,
 9 506 U.S. 364, 371 (1993) (the prejudice analysis focuses on whether the result of the
 10 proceeding was fundamentally unfair or unreliable because of counsel’s ineffectiveness).
 11 The sentencing court “need not determine whether counsel’s performance was deficient
 12 before examining the prejudice suffered by the defendant.” *Strickland*, 466 U.S. at 697. “If
 13 it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient
 14 prejudice,...that course should be followed.” *Id.*

15 Courts must consider ineffective-assistance-of-counsel claims with “a strong
 16 presumption that counsel’s conduct falls within the wide range of reasonable professional
 17 assistance.” *Id.* at 689. “To prove deficiency of performance, the defendant must show
 18 counsel made errors so serious that performance fell below an objective standard of
 19 reasonableness under prevailing professional norms.” *Mak v. Blodgett*, 970 F.2d 614, 618
 20 (9th Cir. 1992) (citing *Strickland*, 466 U.S. at 688.) To prove prejudice, “the defendant
 21 must show that there is a reasonable probability that, but for counsel’s unprofessional
 22 errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694.

23 “[A] guilty plea represents a break in the chain of events which has preceded it in
 24 the criminal process. When a criminal defendant has solemnly admitted in open court that
 25 he is in fact guilty of the offense with which he is charged, he may not thereafter raise
 26 independent claims relating to the deprivation of constitutional rights that occurred prior
 27 to the entry of the guilty plea.” *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *see also*
 28 *United States v. Lopez-Armenta*, 400 F.3d 1173, 1175 (9th Cir. 2005) (“[I]t is well-settled

1 that an unconditional guilty plea constitutes a waiver of the right to appeal all
 2 nonjurisdictional antecedent rulings and cures all antecedent constitutional defects.”)
 3 (citing *Tollett*, 411 U.S. at 267). Thus, Movant’s guilty plea limits the breadth of issues that
 4 he may raise and he “may only attack the voluntary and intelligent character of the guilty
 5 plea by showing that the advice he received from counsel was [deficient].” *Tollett*, 411
 6 U.S. at 267.

7 A plea is voluntary and intelligent if, under the totality of the circumstances, the
 8 defendant is made aware of the direct consequences of the plea, the “essential ingredient”
 9 of which is the maximum possible penalty. *See Little v. Crawford*, 449 F.3d 1075, 1080
 10 (9th Cir. 1988).

11 1. Defendant’s First Claim: Failure to Adequately Investigate the Case and Explain
 12 the Impact of, and Alternatives to, a Guilty Plea.

13 The Court should deny the defendant’s first claim because it is directly contradicted
 14 by the record, and he fails to show prejudice. In his motion, the defendant makes several
 15 factual assertions under Ground One as to why his attorney was ineffective. He alleges that
 16 Mr. Mendoza failed to explain and discuss options and alternatives to a guilty plea, failed
 17 to explain the charges, the elements, and the enhancements, and failed to discuss the
 18 defendant’s decision to plead guilty. (CV-ECF Doc. 1 at 4.)

19 At the change of plea hearing, the defendant admitted in open court he was guilty
 20 of the offense charged after he was informed of the maximum penalties he faced, the rights
 21 he was giving up, the elements of the charge, and the specific terms of the plea agreement.
 22 (COP TR 6-14.) The defendant assured the court that he signed the plea agreement after
 23 going over it with his attorney, and Mr. Mendoza stated that he reviewed the plea with the
 24 defendant in Spanish.⁵ (COP TR 5:24-25, 6:1, 7:24-25, 8:1.) A term of the plea included
 25 an enhancement for aggravated role, which the defendant stated he understood. (COP TR

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 27 ⁵ The defendant is a Spanish speaker and was assisted by the Court’s interpreter at
 28 all court hearings. (See CR-ECF Docs. 3, 67, 91.)

7:1-3, 19-24.) Additionally, Mr. Mendoza’s Declaration states that he met with the defendant 24 times where he explained the impact of proceeding to trial as opposed to negotiating a plea agreement, the exposure the defendant faced if he went to trial and lost, and the likely offense level computation including the managerial role and importation of methamphetamine enhancements. (*See* Ex. 1 at ¶ 5.)

The defendant also claims, under Ground One, that he was prejudiced by defense counsel, because “[h]ad Counsel apprised, properly informed, not misled or deceived Petitioner, engaged in plea negotiations, investigated the facts, and challenged self-serving statements used against Petitioner, Petitioner would not have entered a plea of guilty or would have opted differently or sought the most favorable plea offer.” (Typos corrected).⁶ The defendant does not explain what self-serving statements he is referring to, but the disclosure in this case involved the defendant’s own incriminating statements to an undercover agent, and statements from a confidential informant. (CR-ECF Doc. 88.) Mr. Mendoza informed the defendant of those statements and reviewed and evaluated all of the disclosure to determine whether there was a good-faith basis to suppress the evidence – he determined there was not. (*See* Ex. 1 at ¶¶ 3-4.) The defendant cannot show that Mr. Mendoza’s advice to accept the government’s plea offer prejudiced him (or was deficient), and the defendant’s motion should be denied.

2. Defendant’s Second Claim: The Defendant’s Guilty Plea was Entered “Unknowingly, Unintelligently and Involuntary.”

The Court should deny the defendant’s second claim because it is also contradicted by the record. The defendant’s Motion, under Ground Two, claims that defense counsel provided misleading, inaccurate, and deceptive advice, and omitted facts from the defendant. Specifically, the defendant claims that Mr. Mendoza was ineffective for failing

⁶ This sentence in the defendant’s Motion contained numerous typos. Undersigned counsel corrected the typos without placing “[sic]” after the corrected words. Please refer to CV-ECF Doc. 1 at 5 for the unedited sentence.

1 to correct the two-level enhancement for aggravated role in the PSR.

2 The two-level enhancement was a bargained-for term in the defendant's plea
3 agreement. (CR-ECF Doc. 64.) Judge Rateau went over the term during the change of plea
4 hearing. (COP TR 7:1-3, 19-24.) And Mr. Mendoza explained the enhancement to the
5 defendant prior to the defendant pleading guilty. (*See* Ex. 1 at ¶¶ 5-6.) It was a term that
6 the defendant was aware of and agreed to prior to pleading guilty. The record contradicts
7 the defendant's second claim.

8 The defendant also fails to show prejudice. If Mr. Mendoza objected to the PSR
9 applying the two-level enhancement, then the government would have withdrawn from the
10 plea agreement. In other words, if Mr. Mendoza had been "effective" in the defendant's
11 view and objected to the PSR, the defendant would have been facing trial with a maximum
12 penalty of life in prison instead of a sentence between 120 and 180 months.

13 The defendant also claims that he was prejudiced because had defense counsel
14 "challenged all evidence statements used against" him, he "would have proceeded to trial
15 and or sought the most favorable plea offer." (Typos corrected).⁷ Again, the defendant does
16 not explain what statements he believes defense counsel should have challenged, and he
17 fails to show with a reasonable probability that if defense counsel had challenged the
18 statements, then the result of his case would have been different. The defendant has failed
19 to show prejudice and his motion should be denied.

20 3. Defendant's Third Claim: Failure to Investigate the Defendant's Criminal
21 History and Correct Information that Caused his Sentence to be Enhanced.

22 The defendant's third claim is contradicted by the record and this Court should deny
23 it. Under Ground Three in the defendant's Motion, he claims Mr. Mendoza was ineffective
24 for failing to correct the information in the PSR, specifically the enhancement for
25 managerial role, and for failing to investigate the defendant's criminal history. As
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28 ⁷ Refer to CV-ECF Doc. 1 at 6 for the unedited sentence.

1 previously mentioned, Mr. Mendoza's failure to object to, or correct, the aggravated role
2 enhancement was not ineffective assistance and did not prejudice the defendant.

3 The defendant has no criminal history in the United States and the Court properly
4 found that the defendant was in Criminal History Category I. (TR SE 3:21-23.) The
5 defendant's motion does not specify what investigation he believes Mr. Mendoza should
6 have done, but based on the defendant's *lack* of criminal history, there was nothing for his
7 attorney to investigate. The defendant's claim is without merit and should be denied.

8 **III. Conclusion**

9 Movant's claims of ineffective assistance of counsel are contradicted by the record
10 and Movant's admissions during the change of plea hearing. He is not entitled to an
11 evidentiary hearing or relief under § 2255, and his petition should be denied.

12 Respectfully submitted this 20th day of December, 2024.

13
14 GARY M. RESTAINO
15 United States Attorney

16 *s/Ashley Culver*
17 ASHLEY CULVER
18 Assistant United States Attorney

19
20 Copy of the foregoing served
21 via US Postal Service on the
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